

REMARKS

Reconsideration and withdrawal of the rejections of the Office Action are respectfully requested in view of the amendments and remarks herein.

I. STATUS OF THE CLAIMS AND FORMAL MATTERS

Claims 1,-44, 47 and 49 are currently pending. Claim 1 has been amended, without prejudice, without admission, without surrender of subject matter, and without any intention of creating any estoppel as to equivalents.

No new matter is added.

It is submitted that these claims are in full compliance with the requirements of 35 U.S.C. §112. The amendments to the claims and the remarks herein are not made for the purpose of patentability within the meaning of 35 U.S.C. §§ 101, 102, 103 or 112; but rather the amendments and remarks are made simply for clarification and to round out the scope of protection to which Applicants are entitled. Support for the present amendment is found throughout the specification, including at page 1, last paragraph, and at page 23, first paragraph.

II. THE ART REJECTIONS ARE OVERCOME

Claims 1-17 were rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Woldhuis (EP 0 403 030). Claims 1-44, 47 and 49 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Woldhuis (EP 0 403 030). The rejections are respectfully traversed and will be addressed together.

The Examiner is respectfully reminded that a two-prong inquiry must be satisfied in order for an anticipation rejection to stand. First, the prior art reference must contain all of the elements of the claimed invention. *See Lewmar Marine Inc. v. Barient Inc.*, 3 U.S.P.Q.2d 1766 (Fed. Cir. 1987). Second, the prior art must contain an enabling disclosure. *See Chester v. Miller*, 15 U.S.P.Q.2d 1333, 1336 (Fed. Cir. 1990).

Further, Applicants respectfully assert that in order to ground an obviousness rejection, there must be some teaching which would have provided the necessary incentive or motivation for modifying the reference's teaching. *In re Laskowski*, 12 U.S.P.Q. 2d 1397, 1399 (Fed. Cir. 1989); *In re Obukowitz*, 27 U.S.P.Q. 2d 1063 (B.P.A.I. 1993). Further, "obvious to try" is not the standard under 35 U.S.C. §103. *In re Fine*, 5 U.S.P.Q. 2d 1596, 1599 (Fed. Cir. 1988). And

as stated by the Court in *In re Fritch*, 23 U.S.P.Q. 2d 1780, 1783-1784 (Fed. Cir. 1992): “The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggests the desirability of the modification.” Also, the Examiner is respectfully reminded that for the Section 103 rejection to be proper, both the suggestion of the claimed invention and the expectation of success must be founded in the prior art, and not Applicants’ disclosure. *In re Dow*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988).

The present invention relates to a multi-component foodstuff comprising (a) a first food material; (b) a barrier composition; and (c) a second food material, wherein the barrier composition prevents water migration from one component into another within the foodstuff.

In contrast, Woldhuis relates to providing an outer coating to cheese to prevent weight loss (see, e.g., page 3, lines 27-35). That is, Woldhuis is concerned with the loss of water from the foodstuff into the atmosphere, not into another part of the foodstuff.

Applicants respectfully assert that Woldhuis fails to teach or suggest all of the elements of the claimed invention.

The Office Action alleges that Woldhuis relates to branched chain fatty acids and that Woldhuis further relates to a “first food component coated with a second food material.”

Applicants respectfully assert that the present claims have been amended herein to specify that the foodstuff has multiple components, i.e., a first and a second food material that together form the foodstuff. Further, the first and second food material of the present invention are separated by a barrier composition. Said barrier composition prevents the migration of water from one to the other of the multiple food materials.

This is in contrast to Woldhuis, which relates to a foodstuff, i.e., cheese, coated with a second material (which the Examiner maintains is a food material; Applicants continue to dispute this contention), wherein the second material is the barrier or coating. That is, the barrier or coating is not present in between two different food materials, as is required by the present invention. Indeed, to arrive at the present invention from the descriptions present in Woldhuis, the wax coating of Woldhuis would have to separate the cheese it coats from a second food material. Woldhuis does not teach or suggest a cheese coated with wax which is then coated with a second food material.

Furthermore, the differences described above between the present invention and Woldhuis lead to very different functions. Woldhuis is concerned with preventing weight loss.

That is, the coating in Woldhuis is applied to the outer surface of cheese to prevent water within the cheese from evaporating into the atmosphere, thus lightening the weight of the cheese as it dries out. In contrast, the present invention places a barrier composition between two separate food materials, in order to prevent the movement of water between the two food materials by osmosis.

Accordingly, Applicants respectfully submit that Woldhuis neither teaches or suggests a foodstuff according to the present invention that comprises a first food material and a second food material separated by a barrier composition such that the barrier composition prevents or reduces movement of water from one food material to the other. Furthermore, Applicants respectfully submit that one of skill in the art would not be motivated to look to Woldhuis in preparing a foodstuff of the present invention as Woldhuis relates to a thick wax-like coating for the outside of a foodstuff such as cheese. Further, even if one of skill in the art did look to Woldhuis for guidance, one would not arrive at the invention as presently claimed as there is no teaching or suggestion of Woldhuis of the use of a barrier composition **between** two food materials, to prevent the migration of water between the two food materials.

Therefore, as Woldhuis neither teaches nor suggests a multi-component foodstuff of the present invention, the obviousness rejections cannot stand.

For all of the reasons above, the rejections based on Woldhuis are improper. Woldhuis neither recites all of the elements of the claimed invention, nor motivates one of skill in the art to modify Woldhuis to arrive at the present invention. Accordingly, reconsideration and withdrawal of the rejections under 35 U.S.C. §§ 102 and 103 are respectfully requested.

REQUEST FOR INTERVIEW

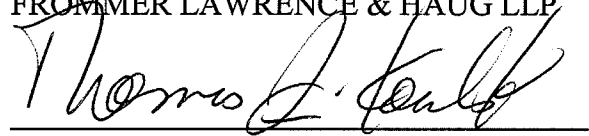
If any issue remains as an impediment to allowance, an interview with the Examiner and her supervisor, is respectfully requested, prior to issuance of any paper other than a Notice of Allowance; and, the Examiner is respectfully requested to contact the undersigned to arrange a mutually convenient time and manner for such an interview.

CONCLUSION

In view of the remarks herewith, the application is in condition for allowance. Reconsideration and withdrawal of the rejections of the application, and prompt issuance of a Notice of Allowance, are respectfully requested.

Respectfully submitted,
FROMMER LAWRENCE & HAUG LLP

By:

A handwritten signature in black ink, appearing to read "Thomas J. Kowalski", is written over a horizontal line.

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